IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CRIMINAL JURISDICTION

CRIMINAL APPEAL NO. 615 OF 1997

Date of Decision : 19th July, 2005.

For Approval and Signature :

The Honourable Mr. Justice V.G.Palshikar :

The Honourable Mr. Justice R.C. Chavan :

1. Whether Reporters of Local Papers may be allowed to see the Judgment?

2. To be referred to the Reporters or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges ?

6. Whether the case involves an important question of law and whether a copy of the Judgment should be sent to Nagpur, Goa and Aurangabad office?

*****

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CRIMINAL JURISDICTION

CRIMINAL APPEAL NO. 615 OF 1997

1.	Parshuram Bhiva Patil	]
2.	Maruti Joma Patil	]
3.	Ramkrishna @ Kalya Bhiva Patil	]
4.	Dhanaji Bhiva Patil	]
	All adults Residing at Village Rave, Taluka Pen, District Raigad.	]..Appellants][Orig.Accused]
	Versus	
	The State of Maharashtra	]..Respondent [Orig.Complt.]

Mr. A.P. Mundargi i/b. Mr. Umesh Nikam for the Appellants.
Mrs. V.R.Bhosale APP for the State.

CORAM : V.G.PALSHIKAR &
R.C.CHAVAN, JJ.
DATE : JULY 19, 2005.

ORAL JUDGMENT [PER R.C.CHAVAN,J.]

1. Taking exception to their conviction by the learned Additional Sessions Judge, Raigad-Alibag for offences punishable under Sections 302, 307 read with 34 of the Indian Penal Code and the resultant sentences imposed upon them, the appellants have preferred this appeal.

2. The facts, which gave rise to the prosecution of the appellants are as under :-

. The appellants and the deceased Bhagwan Mokal were residents of Village Rave, Taluka Pen, District Raigad. It seems that there was some political rivalry

between the victim and the appellants. On 12.5.1990, at about 7.30 p.m. the victim, accompanied by complainant - Ganesh, had gone to answer call of nature in nearby agricultural land, known as 'Khartan'. Suddenly, the four appellants came there and started dragging the deceased towards the water tank. All of them were armed with knives. They started giving blows by knives on Bhagwan Mokal. When Ganesh Patil went to Bhagwan's rescue, he too received blows by knife from accused No.3 Ramkrishna. Both Bhagwan as well as Ganesh fell on the spot. When the villagers came to the spot, the accused ran away. On a report of Ganesh, the police registered the offence and commenced the investigation.

3. During the course of investigation, police performed inquest on the dead body and sent it for post-mortem examination, performed panchanama of the spot, seized incriminating articles, recorded statements of the witnesses, sent the incriminating articles to forensic science laboratory, and, on completion of the investigation, charge-sheeted the appellants before the learned Judicial Magistrate, First Class, Pen, who in turn, committed the case to the Court of Sessions at Raigad-Alibag.

4. The learned 2nd Additional Sessions Judge, Raigad, to whom the case was assigned, framed the Charge

against the accused-appellants for offences punishable under Sections 302, 307 read with 34 of the Indian Penal Code. All the accused-appellants pleaded not guilty and, were put on trial.

5. The prosecution examined in all seven witnesses in its attempt to bring home the guilt of the accused. The learned Additional Sessions Judge recorded the Statement of the accused under Section 313 of the Code of Criminal Procedure and upon consideration of the evidence tendered in light of arguments advanced, concluded that the prosecution had proved that all the four accused-appellants had committed the murder of Bhagwan Mokal and also had attempted to commit murder of the complainant- Ganesh. He, therefore, proceeded to convict them for offences punishable under Sections 302 and 307 rad with 34 of the Indian Penal Code and imposed sentences of imprisonment for life and seven years, respectively for the two offences, with fine of Rs. 2,000/-. Aggrieved hereby, the accused have filed this appeal.

6. We have heard both the learned Counsel for the appellants and the learned Additional Public Prosecutor. The learned Counsel for the appellants submitted that the accused No.3 Ramkrishna had sustained serious injuries in the incident. On complainant of R.B.

Patil, the police had registered an offence and even filed charge-sheet. Yet, in the entire evidence tendered by the prosecution before the Court of Sessions, in the present case, the prosecution did not explain serious injuries to Ramkrishna. He, therefore, submitted that this is a major infirmity in the prosecution evidence, which casts doubt on the truthfulness of the prosecution witnesses.

7. The learned Additional Public Prosecutor submits that the prosecution had explained the injuries on the accused No. 3 Ramkrishna also, as a cross case has been filed by the prosecution. True it is, that as an independent prosecuting agency, the State has treated both the parties even handedly and proceeded to prosecute the complainant and others for injuries sustained by accused No.3. Yet, when the learned Counsel for the appellants contends that the injuries on the accused are not explained, what the Counsel aims at is non-explanation of the injuries sustained by accused No. 3 Ramkrishna by prosecution witnesses, casting a serious doubt on the veracity of the witnesses. If the witnesses have seen the incident and depose only about a part of it in the court, concealing the unfavourable part of the evidence, such concealment would lead to a serious doubt about the credibility of the witnesses.

8. The learned Counsel for the appellant relied on decisions in **SHRIRAM VS. STATE OF M.P. REPORTED IN (2004) 9 SCC 292** and **LAXMI SINGH VS. STATE OF BIHAR reported in AIR 1976 SC 2263,** Considering the effect of

un-explained injuries on the accused, the Apex Court in Laxmi Singh's case observed thus ;-

> ".... It seems to us that in a murder case, the non - explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:-
>
> > (1) That the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;
> >
> > (2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;
> >
> > (3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.
>
> The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or enemical witnesses or where the defence gives a version which competes in probability with that of the prosecution one. ..."

10. It will be seen that accused No.3 Ramkrishna was examined by PW 5 Dr. Ajit Eknath Gavali who proved his certificate in respect of the injuries of the accused at Exhibit 61. He had observed the following injuries on

the person of the accused :-

1. Lacerated Wounds 3 cm. and 2 cm. both were situated on the scalp;

2. Traumatic amputation, right index finger through proximal phalynx, whole finger hanging over skin;

3. Fracture proximal phalynx, right 3rd finger;

4. Incised wound 1.5 x 0.5 x 0.5 cm. on second left finger tip;

5. Incised wound 1 cm. on second left index finger, lateral side;

6. incised wound 2 x 1 x 0.5 cm. on left planter (palmer) aspect, left base of thumb.

11. The learned Counsel for the appellants submitted that it will be seen from the nature of the injuries observed by the medical officer in course of examination of the injured on 13.5.1990 that the accused had suffered traumatic amputation on right index finger. The Counsel further submits that these injuries are not minor or superficial and, therefore, it would have been necessary for the prosecution witnesses to explain the manner in which the accused sustained these injuries, if at all the prosecution witnesses desired that their evidence should be believed.

12. P.W.1 Ganesh, who had given the Report of the incident vide Exhibit 45, PW 2 Baburao, PW 3 Nandabai and PW 4 Hiraman do not clarify as to how accused No.3 Ramkrishna sustained such a severe injury. The partisan

nature of the evidence of these witnesses with prior unsavoury incident between two groups, makes it necessary to exercise extreme caution in placing reliance on the words of these witnesses.

13. When the assailants could as well have assaulted Bhagwan and Mokal in Khartan land, it is unbelieveable that assailants would drag the victims to village water tank as if they wanted to launch attack in full view of villagers. If the victim was indeed dragged there would be injuries to his legs and other parts of the body, indicative of dragging; but the post-mortem notes, Exhibit 54 do not show any such injuries.

14. PW 1 Ganesh stated that all the accused were armed with knives or weapons and all of them started beating Bhagwan with those weapons. When he went to the rescue of Bhagwan, he too was beaten. He states that after he received the first blow of knife on his left hand, he tried to run away but the accused persons did not allow him to go. He states that accused No.3 Ramkrishna give blow of knife on his waist, left elbow and right thigh. Medical certificate in respect of this witness Ganesh is at Exhibit 60 and has been duly proved by PW 5 Dr. Ajit Gavali, which shows that there were two incised wounds. The first was a grievous stab wound on left anterior superior ileac region and the second

was on left anterio lateral arm. Thus the beating by the four accused persons to PW 1 for ten minutes surprisingly resulted in only these two injuries.

15. PW 3 Nandabai had stated that other villagers followed her and reached the place of incident, obviously after her. This would imply that PW 2 Baburao reached the place of incident after PW 3 Nandabai reached the spot. Still PW 2 Baburao has a very interesting tale. Baburao had improved upon the story given by him before the police and stated before the Court that when accused No.1 was giving blows of knife to the victim, accused No. 2 and 4 had caught hold of the victim, and accused No. 1 and 2 caught hold of Ganesh Patil, when accused No. 3 and 4 were giving blows. Ganesh Patil himself does not state that accused No. 1 and 2 caught hold him and accused NO. 3 and 4 gave him blows. This erodes the credibility of the evidence of Baburao.

16. While Ganesh stated that during the course of dragging there was no assault, Baburao had stated before the police that when deceased Bhagwan was being dragged accused were giving blows of knife. PW 2 Baburao contradicted concerned part of the police statement which was duly proved by PW 7 P.I. Deshmukh. Thus, the version of PW 2 Baburao is totally unbelievable.

17. PW 4 Hiraman stated that he reached the place of incident after hearing commotion. He too saw the accused persons giving blows by weapons to Bhagwan and Ganesh. He claims to have seen the incident from a distance of about 10 to 15 meters. The evidence of this witness would have to be disbelieved for, he stated that he reached the place of incident after crossing about 100 houses. He further stated that the accused first gave blows by weapons to the victims and then dragged the victims to water tank, which is exactly opposite of what PW 1 Ganesh stated. Further, if he came crossing distance of 100 houses and if the beating was still going on to be seen by him, it must have been either a fierce fight between two equally matched groups or should have produced many more injuries than those observed by doctors.

18. The above evaluation of account of eye witnesses would show that it would be extremely unsafe to base finding of guilt of the accused on this type of testimony, without circumstantial corroboration.

19. PW 6 Sharad was supposed to have witnessed disclosure by the accused and resultant discovery of the weapons, vide Exhibit 63, 64, 65, 66, 67 and 68. He turned hostile. These documents do not bear the

signatures of the accused, at whose instance such discoveries were made. The evidence of PW. 7 P.I. Deshmukh in respect of these discoveries is to the following effect :-

> ".... on 31.5.1990 I recovered the clothes and knife at the instance of accused No.2 Maruti Patil on the basis of his memorandum and seized under panchanama. The memorandum and panchanama at Exhibit 63 and 64 respectively now shown tome are the same. On the same day I also recovered the clothes and knife at the instance of accused No.1 on the basis of his memorandum and seized under panchanama. The meorandum and panchanama now shown to me, are the same at Exhibits 65 and 66..."; and
>
> ".... on 9.6.1990 I recovered the knife at the instance of accused No.3 on the basis of his memorandum and seized under panchanama. the; memorandum and panchanama at Exhibit 67 and 68 now shown are the same....."

20. It will be seen that the witness did not even take the trouble of going through the drill of reproducing in the court exactly how he interrogated the accused ;how the accused made the disclosure and how the accused led him to the spot where the weapons were concealed. This perfunctory evidence about the discovery has to be rejected. The learned Counsel for the appellant drew our attention to yet one more incredible aspect about these three discoveries. The first memorandum, Exhibit 63 is dated 31st May, 1990, wherein accused Maruti had stated that he would show the clothes and knife hidden under the earth near a bridge. The second discovery evidenced by Exhibit 65 at the

instance of accused Parshuram is also in respect of similar articles from the same place. Most incredibly, accused because Ramkrishna too agreed to uncover the concealed knife from the same place on 9th June, 1990, nine days after the first two discoveries. This discovery of knife, at the instance of accused Ramkrishna had to be made on 9th June because he was discharged from hospital, where he was undergoing treatment for injuries, on the 7th June.

21. The evidence as indicated above is liable to be rejected, as unreliable, first, because of non-explanation of the injuries on the person of accused No. 3 Ramkrishna; secondly, because it is extremely partisan in character; thirdly because it is full of improbabilities, inconsistencies, contradictions and improvements on material particulars; and lastly because it was sought to be supported by contrived and artificial discoveries.

22. In the result, we allow the appeal, set aside the conviction and sentence of the accused- appellants for offences punishable under Sections 302, 307 read with 34 of the Indian Penal Code , acquit them of the said offences and direct that the fine amount, if paid by the accused, shall be refunded to them.

. The bail bonds furnished by the accused-appellants shall stand cancelled.

...

(V.G.Palshikar, J.)

(R.C. Chavan, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CRIMINAL JURISDICTION

CRIMINAL APPEAL NO. 615 OF 1997

1. Parshuram Bhiva Patil]
2. Maruti Joma Patil]
3. Ramkrishna @ Kalya Bhiva Patil]
4. Dhanaji Bhiva Patil]
All adults Residing at Village]
Rave, Taluka Pen, District]..Appellants
Raigad.][Orig.Accused]

Versus

The State of Maharashtra]..Respondent
[Orig.Complt.]

Mr. A.P. Mundargi i/b. Mr. Umesh Nikam for the Appellants.
Mrs. V.R.Bhosale APP for the State.

CORAM : V.G.PALSHIKAR &
R.C.CHAVAN, JJ.
DATE : JULY 19, 2005.

For the reasons separately recorded in the Judgment, the Court has passed the following Order :-

"1. In the result, we allow the appeal, set aside the conviction and sentence of the accused- appellants for offences punishable under Sections 302, 307 read with 34 of the Indian Penal Code , acquit them of the said offences and direct that the fine amount, if paid by the accused, shall be refunded to them.

. The bail bonds furnished by the accused-appellants shall stand cancelled."

...